



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-720-50.C.
Regulation title	Water Quality Management Planning Regulation: Potomac-Shenandoah: Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers.
Action title	Revise Total Nitrogen (TN) and Total Phosphorus (TP) Waste Load Allocations for Merck, Inc. (VPDES VA0002178) as follows: <ul style="list-style-type: none"> • TN – increase from 14,619 lbs/yr to 43,835 lbs/yr • TP – increase from 1,096 lbs/yr to 4,384 lbs/yr
Final agency action date	August 4, 2011
Document preparation date	June 14, 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

At their 4/27/09 meeting, the State Water Control Board approved amendments to the Water Quality Management Planning Regulation (9 VAC 25-720) that increased nutrient waste load allocations for Merck, Inc., a discharger in the Potomac-Shenandoah basin. The approved increases were as follows:

- Total Nitrogen – increase from 14,619 lbs/yr to 43,835 lbs/yr
- Total Phosphorus – increase from 1,096 lbs/yr to 4,384 lbs/yr

In June 2009 the Chesapeake Bay Foundation and Virginia Waterman's Association filed an appeal with the Richmond Circuit Court contesting this action. The parties involved have agreed to settle the case

according to the terms set out in a Consent Decree entered with the Court on 4/27/11. Most notable among the terms of the Decree was an order by the Court that:

1. The Board shall forthwith amend its Water Quality Management Planning Regulation, 9 VAC 25-720-50, as shown in Exhibit A.

The amended waste load allocations in Exhibit A of the Decree are the same as the revisions approved by the State Water Control Board on 4/27/09. In addition, Exhibit A modified the “footnote” that accompanies the Merck allocations; these changes are detailed in a following section.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Water Control Board, at its August 4, 2011 meeting, approved amendment of the Water Quality Management Planning Regulation (9 VAC 25-720-50.C.), as directed by the Richmond Circuit Court in a Consent Decree entered April 27, 2011. The subject amendments will increase nutrient waste load allocations for Merck, Inc. (VA0002178) as follows:

- Total Nitrogen – increase from 14,619 lbs/yr to 43,835 lbs/yr
- Total Phosphorus – increase from 1,096 lbs/yr to 4,384 lbs/yr

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9 VAC 25-720-50.C.		Merck-Stonewall WWTP (Outfall101) ¹⁰ Total Nitrogen (TN) Waste Load Allocation (lbs/yr) = 14,619 Total Phosphorus (TP) Waste Load Allocation (lbs/yr) = 1,096 (10) Merck-Stonewall – (a) on January 1, 2011, the following waste load allocations (WLAs) are effective and supersede the existing WLAs: total nitrogen of 43,835 lbs/yr and total phosphorus of 4,384 lbs/yr; (b) waste load allocations will be reviewed and possibly reduced based on "full-scale" results showing the optimal treatment	Merck-Stonewall WWTP (Outfall101) ¹⁰ Total Nitrogen (TN) Waste Load Allocation (lbs/yr) = 43,835 Total Phosphorus (TP) Waste Load Allocation (lbs/yr) = 4,384 (10) Merck-Stonewall – (a) these waste load allocations will be subject to further consideration, consistent with the Chesapeake Bay TMDL, as it may be amended, and possible reduction upon "full-scale" results showing the optimal treatment capability of the 4-stage Bardenpho technology at this facility consistent with the level of effort

		<p>capability of the 4-stage Bardenpho technology at this facility consistent with the level of effort by other dischargers in the region. The "full scale" evaluation will be completed by December 31, 2011, and the results submitted to DEQ for review and subsequent board action; (c) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with § 62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/yr; and (d) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in clause (c).</p>	<p>by other dischargers in the region. The "full scale" evaluation will be completed by December 31, 2011, and the results submitted to DEQ for review and subsequent board action; (b) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with § 62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/yr; and (c) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in clause (b).</p>
--	--	---	---

The rationale for the changes is the fact that the Richmond Circuit Court has ordered the State Water Control to make the amendments, in accordance with a Consent Decree entered 4/27/11.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Not analyzed, as action is in response to a Court Ordered Consent Decree.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

No adverse impact expected.